

REMARKS

In the Office Action mailed October 10, 2006, Claims 7-16 and 18-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hull (*Introduction to Futures & Options Markets*) in view of "Disclosed Prior Art" (citing applicant's specification at page 27, lines 1-6) and Options (*Options: Essential Concepts & Trading Strategies*). Claims 1-6 and 17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hull in view of Disclosed Prior Art, Options, and Rosen (U.S. Patent No. 5,453,601).

Claims 1, 7, 11, 13, 15, 18, and 19 have been amended. No claims have been canceled. Claims 27-48 have been added. Claims 1-48 are thus presented for consideration and allowance.

Interview Summary

Prior to discussing the patentability of the claims, the undersigned counsel thanks Examiner Borlinghaus and Supervisory Primary Examiner Kramer for the time and consideration they extended in a telephonic interview conducted March 7, 2007. The interview, in summary, focused principally on independent Claim 7, with acknowledgment of similar language in independent Claims 1 and 13, in view of the teachings of Disclosed Prior Art and Options. Applicant agreed to submit the present response for further consideration by the Examiner.

The Office Action first addressed Claims 7-16 and 18-26, followed by Claims 1-6 and 17. For ease of examination, applicant will follow the same order when discussing the claims in this response.

Claims 7-12 And 24-26 Are Patentable Over The Prior Art

Claim 7 recites as follows:

7. A method of facilitating trading, comprising:
automatically receiving a short term option request from a user, the term of the option being about ten seconds or less measured from when the option is granted, and
automatically requesting the short term option from a market process, the market process being a computer program executing on a computer system and implementing rules of engagement by which information or merchandise is exchanged between trading processes.

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As acknowledged in the Office Action, Hull teaches nothing about a short term option having a term "being about ten seconds or less." Further, nothing in Hull even suggests a short term option as defined in Claim 7. The term of the option is "measured from when the option is granted." See, e.g., page 26, line 30 of the present application.

To reject Claim 7, the Office Action cited applicant's own specification at page 27, lines 1-6. To provide context to this portion of the specification (italicized below), the complete passage at page 26, line 22 to page 27, line 13, of the present application reads as follows:

Service: Stop Order

Stops, short term option orders, can be provided as an optional feature of an order umpire. The expiration time of a stop may be controlled through platform services to ensure guaranteed execution for a linked order. The expiration time is typically sufficient for a process on system 5 to accomplish an operation on the platform, with present computer processing technology, this time is several hundred milliseconds or less.

FIG. 103 illustrates an example of stop order processing.

Conventional options expire at one of a set of predetermined times in the future, rather than in a short time measured from when they are granted. Recently, the International Securities *Exchange has provided an automated facility for trading these conventional options. So-called "forwards" enable a trader to negotiate the expiration time.*

In conventional human-directed markets, a market maker will often grant a short-term option to a trader, sometimes for a fee and sometimes as a favor. The market maker is exposing himself or herself to arbitrage by the trader, so is reluctant to grant such stops for more than intervals of time measured in tens of seconds. Due to human reaction times, a stop for a duration of one second or less is useless, since a human cannot physically take another trading action in such a short time.

In contrast, system 5 has many mechanisms to ensure appropriate management of small intervals of time despite computer queues and the like. System 5 is also concerned with allowing human behaviors to occur electronically, rather than forcing all trades into the conventional electronic bulletin board paradigm. The fundamental nature of system 5 makes a short-term stop meaningful, whereas in conventional systems it is useless.

The paragraph beginning "Conventional options..." is clearly discussing options of the type taught by Hull that expire at a predetermined expiration time (e.g., at the close of the market

on the third Friday of the month). The expiration of a conventional option is not measured from when the option is granted. Even where the specification indicates that the International Securities Exchange has provided an "automated facility" for trading options, the facility is explicitly described as trading "these conventional options." The same paragraph discussing conventional options further refers to so-called "forwards" that enable a trader to negotiate the expiration time. Traders may maintain an option position with an expiration time that is rolled forward by buying (or selling) an option with the same strike price but with a different expiration time and close their current option position. In all cases, this paragraph of applicant's disclosure does not present any statements of prior art that teach or suggest "a short term option..., the term of the option being about ten seconds or less measured from when the option is granted," as recited in Claim 7.

The paragraph that follows (beginning "In conventional human-directed markets...") also does not present any statements of prior art that teach or suggest the subject matter claimed in Claim 7. Rather, this paragraph continues to refer conventional human-directed markets. Short term options of "about ten seconds or less" are distinguished over the prior art, precisely because human response times in human-directed markets, which are measured in tens of seconds (see page 27, lines 4-6), is longer than computer response times which can be much less. Indeed, due to human reaction times, a short term option having a duration of one second or less may be considered useless, since a human cannot physically take another trading action in such a short time. See page 27, lines 6-8, of the present application. As discussed in the telephone interview, nothing constituting "prior art" in applicant's disclosure teaches a short term option having a term "being about ten seconds or less measured from when the option is granted."

As with the previous Office Action, the present Office Action (page 4) conceded that "[n]either Hull nor Disclosed Prior Art teaches a short term option request for an option term less than about ten seconds." Nevertheless, the Office Action continued to state it would have been

obvious for one of ordinary skill in the art to modify Hull and Disclosed Prior Art to allow for **any** option term. (Emphasis added). Applicant disagrees.

Applicant's disclosure of "so-called 'forwards' [that] enable a trader to negotiate the expiration time" does not support such an assertion. Applicant's disclosure must be taken in context, and as discussed above, it is evident that such "forwards" are dealing with conventional options that have conventional stated expiration times. This statement does not support a conclusion that a short term option of **any** length measured from when the option is granted is obvious under Section 103(a), particularly where the Patent Office has explicitly conceded that neither Hull nor Disclosed Prior Art teach such a short term option request.

For secondary support, the Office Action relied on Options for its disclosure of traders termed "scalpers" who hold positions for short time durations. As discussed in the telephone interview, this disclosure is inapposite to the patentability of Claim 7. So-called scalpers are engaged in trading positions that have a starting and ending value, and hope to gain on the trade by capturing a higher ending value. The fact that a scalper may hold a position for "10 seconds to 3 minutes" has no bearing on the availability of a short term option having a term of "about ten seconds or less measured from when the option is granted." Indeed, if anything, Options teaches away from the present application.

In the context of the present application as a whole, it is evident that applicant intended to describe and claim something that is new and not obvious in view of the prior art. While applicant noted the state of the art by referring to "conventional options" that are traded in "human-directed markets," applicant then described the nature and utility of short term options, particularly for use in a trading environment where computer processes representing orders interact with computerized market processes to bring about executed trades. In one particular example, the specification discloses the use of short term options to enable guaranteed execution of a linked order. See page 111, line 8 to page 114, line 3, as well as the discussion of a stop

(short term option) order manager at page 33, line 29 to page 35, line 8, and a linked order execution manager at page 35, line 10 to page 36, line 10.

Where neither Hull nor Disclosed Prior Art teaches the claimed elements of "automatically receiving a short term option request from a user, the term of the option being about ten seconds or less measured from when the option is granted" and "automatically requesting the short term option from a market process, the market process being a computer program executing on a computer system and implementing rules of engagement by which information or merchandise is exchanged between trading processes," the rejection of Claim 7 should be withdrawn and the claim allowed.

Claims 8-12 and Claims 24-26 should also be allowed, both for their dependence on allowable Claim 7, and for the additional subject matter they recite. For example, Claim 12 recites the method of Claim 7, "wherein the automatically receiving and requesting are performed by a trading process, the trading process being a computer program configured to act as an agent that, when executed, represents an order from the user and interacts with the market process according to the rules of engagement," which is not taught or suggested in the cited art.

Claim 26, which depends from Claim 12, further recites "wherein the automatically receiving and requesting are performed by multiple trading process that are simultaneously and independently representing multiple orders of the user," which also is not disclosed in the cited art.

Claims 24 and 25 further recite patentable subject matter. Claim 24 is directed to the method of Claim 7, "wherein the short term option request is automatically received as a result of user trading activity without an explicit request for the short term option from the user," and Claim 25 further states "wherein the short term option request is automatically received as a result of processing a linked order received from the user." Again, these features are not taught or suggested in the cited art and should be allowed.

It is unclear in the Office Action what the Examiner means by an "option swap" and how that constitutes disclosure of a linked order, as claimed in Claim 25, nor has any prior art been cited to support such an assertion. The Office Action noted the use of parallel processing in information technology, but this simply begs the question of whether and where has the prior art shown "multiple trading processes that are *simultaneously and independently* representing multiple orders of *the user*."

Claims 13-23 And 27-29 Are Patentable Over The Prior Art

Claim 13 recites as follows:

13. A method of facilitating trading, comprising:
receiving, at a computer program executing on a computer system
and implementing rules of engagement by which information or
merchandise is exchanged between trading processes, a request for a short
term option having a term of about ten seconds or less measured from
when the option is granted, and
automatically granting the short term option.

As with Claim 7 discussed above, neither Hull nor Disclosed Prior Art teaches a short term option having a term of about ten seconds or less measured from when the option is granted. Consequently, with respect to Claim 13, the cited art cannot be combined to render obvious the elements as claimed. The reference to "scalpers" in Options is also not availing. The Section 103(a) rejection of Claim 13 based on Hull, Disclosed Prior Art, and Options should be withdrawn and the claim allowed.

Claims 14-23 and 27-29 are also patentable, both for their dependence (directly or indirectly) from patentable Claim 13 and for the additional subject matter they recite. For example, Claim 17 recites the method of Claim 13, wherein the method further comprises "automatically requesting a platform process to instantiate and set a timer to indicate when the short term option has expired and terminate the instance of the timer when the short term option has expired." The Office Action cited Rosen (U.S. Patent No. 5,453,601) in support of its rejection of Claim 17, but Rosen does not provide disclosure that overcomes the deficiencies of

Hull and Disclosed Prior Art, as discussed above, nor does Rosen teach the elements claimed in Claim 17. The suggestion of "some management system to monitor and administer the options at expiration time," as stated in the Office Action (page 21), still does not meet the language of Claim 17 ("instantiate and set a timer...and terminate the timer").

Applicant notes that the amendments to Claims 18 and 19 are provided merely to improve the clarity of the claims. The amendments are not required for purposes of patentability.

Claims 27-29 should be allowed for reasons similar to those discussed above relative to Claims 24-26.

In short, Claims 14-23 and 27-29 should be allowed.

Claims 1-6 And 30 Are Patentable Over The Prior Art

Claim 1 recites as follows:

1. A method of facilitating trading, comprising:
automatically receiving a timer request for a timer to measure the duration of a short term option, wherein the term of the option is about ten seconds or less measured from when the option is granted, and wherein the request is received from a market process, the market process being a computer program executing on a computer system and implementing rules of engagement by which information or merchandise is exchanged between trading processes,
in response to the timer request, automatically instantiating the timer and setting the timer to indicate the short term option expiration time, and
automatically terminating the instance of the timer upon expiration of the short term option.

Claims 1-6 were rejected under Section 103(a) as being unpatentable over Hull in view of Disclosed Prior Art and Rosen (U.S. Patent No. 5,453,601) (Office Action, page 18). Rosen was cited for its disclosure of utilizing a timer or clock to indicate an expiration time. Hull and Disclosed Prior Art, even if combined with Rosen, do not disclose "in response to [a] timer request, automatically instantiating the timer and setting the timer to indicate the short term

option expiration time" and "automatically terminating the instance of the timer upon expiration of the short term option." Additionally, Hull, Disclosed Prior Art, and Rosen do not teach "automatically receiving a timer request for a timer to measure the duration of a short term option, wherein the term of the option is about ten seconds or less measured from when the option is granted, and wherein the request is received from a market process, the market process being a computer program executing on a computer system and implementing rules of engagement by which information or merchandise is exchanged between trading processes."

The Office Action (page 21) surmised that Rosen must include "some management system to monitor and administer the options at expiration time" and that "[i]nitiation and/or termination of a timer function" is old and well known. This argument, however, is not commensurate with the language of Claim 1, which includes, in part, "*instantiating the timer and setting the timer...and...terminating the timer*"). Claim 1 is patentable over the cited art.

Applicant notes that the amendment in Claim 1 to replace the word "duration" with "term" is not required for purposes of patentability, nor does it narrow the scope of the claim. Rather, this amendment merely makes the terminology consistent. For example, similar terminology can be found in Claim 7.

Claims 2-6 and 30 are also patentable, for their dependence on patentable Claim 1 and for the additional subject matter they recite. For example, Claim 5 recites the method of Claim 1, "further comprising creating a short term option manager process in response to the timer request, and upon expiration of the short term option, terminating the short term option manager process." From a reading of Hull, it is not necessarily inherent that the "Options Clearing Corporation (OCC)" creates a short term option manager process, as claimed, in response to a timer request and terminates the process upon expiration of the short term option.

For another example, Claim 30 recites that the term of the short term option "is about one second or less measured from when the option is granted." A similar feature is set forth in

Claims 11 and 15, as well as new Claims 35 and 40. This feature is not taught or suggested in the cited art.

Modification of the word "markets" to "market processes" in Claim 8 does not narrow the scope of the claims. Rather, it merely makes the claim terminology consistent with Claim 7.

For the foregoing reasons, Claims 2-6 and 30 should be allowed.

New Claims 31-37 Are Patentable Over The Prior Art

New Claim 31 is directed to a computer-accessible medium having executable instructions stored thereon for facilitating trading. The instructions form a trading process that, when executed, causes a computer to generate a short term option request on behalf of a user and communicate the short term option request to a market process. The term of the option is about ten seconds or less measured from when the option is granted. The market process is a computer program executing on a computer system and implementing rules of engagement by which information or merchandise is exchanged between trading processes.

Applicant submits that the elements of Claim 31 are not shown in the prior art, and thus Claim 31 should be allowed. Additionally, applicant submits that Claims 32-37, which depend either directly or indirectly from Claim 31, should also be allowed, both for their dependence on an allowable claim and for the additional subject matter they recite.

New Claims 38-48 Are Patentable Over The Prior Art

New Claim 38 is directed to a system for facilitating trading that includes a computer having a processing component. The processing component is configured to implement rules of engagement by which information or merchandise is exchanged between trading processes. The processing component is further configured to receive a request for a short term option having a term of about ten seconds or less measured from when the option is granted, and to grant the short term option.

Applicant submits that the elements of Claim 38 are not shown in Hull, Disclosed Prior Art, Options, and Rosen, and thus Claim 38 should be allowed. Additionally, applicant submits

that Claims 39-48, which depend either directly or indirectly from Claim 38, should also be allowed, both for their dependence on an allowable claim and for the additional subject matter they recite.

CONCLUSION

In view of the amendments and remarks discussed above, applicant submits that the claims are patentable over the cited art. Action to that end at an early date is requested. Should any issues remain needing resolution prior to allowance, the Examiner is invited to contact the undersigned counsel by telephone.

Respectfully submitted,

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